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7 Attorneys for Defendants
 K-M Industries Holding Co. Inc.;
 8 K-M Industries Holding Co. Inc. ESOP Plan Committee;
 and CIG ESOP Plan Committee

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

14 THOMAS FERNANDEZ and LORA) Case No. C06-07739 MJJ
15 SMITH, individually and on behalf of a)
class of all others similarly situated,) STIPULATION AND [PROPOSED]
) ORDER RE FOIA DISCOVERY
16 Plaintiffs,)
17 v.)
)
18 K-M INDUSTRIES HOLDING CO., INC.;)
19 K-M INDUSTRIES HOLDING CO. INC.)
ESOP PLAN COMMITTEE; WILLIAM E.)
20 AND DESIREE B. MOORE REVOCABLE)
TRUST; ADMINISTRATOR OF THE)
ESTATE OF WILLIAM E. MOORE,)
21 DECEASED; CIG ESOP PLAN)
COMMITTEE; and NORTH STAR TRUST)
22 COMPANY,)
23 Defendants.)

25 WHEREAS, Plaintiffs made a Freedom of Information Act ("FOIA") request
 26 for information to the Department of Labor ("DOL") on December 22, 2006

1 requesting information regarding the K-M Industries Holding Co., Inc. Employee
2 Stock Ownership Plan, the Kelly-Moore Paint Co. Employee Stock Ownership Plan,
3 and the Capital Insurance Group Employee Stock Ownership Plan ("K-M ESOPs");
4

5 WHEREAS, one Defendant presently has the opportunity to submit to DOL
6 objections under Exemption 4;

7 WHEREAS, Defendants desire to produce all documents to Plaintiffs that it
8 produced to the Department of Labor and Defendants desire that the confidentiality of
9 any such documents that Defendants designate as "CONFIDENTIAL" or "HIGHLY
10 CONFIDENTIAL" be protected under the Stipulated Protective Order signed by the
11 parties;

12 WHEREAS, the Parties to the above titled litigation desire to make discovery
13 in this litigation efficient and cost effective while ensuring that both parties have
14 proper access to documents sent to DOL by Defendants;

15 Accordingly, IT IS HEREBY AGREED AND STIPULATED by the parties
16 through their counsel of record that:

17 1. Defendants will not claim protection under any Exemption, including
18 Exemption 4, with the Department of Labor and will withdraw any previously asserted
19 claims for protection under any Exemption, including Exemption 4, in writing, with a
20 copy of such correspondence copied to Plaintiffs' Counsel. Defendants will, in the
21 same writing, state that they do not object to DOL, in its discretion, producing to
22 plaintiffs the documents that Defendants submitted to the DOL.

23 2. Defendants are unaware of any non-Defendant who has, or intends to,
24 claim protection under any exemption regarding documents submitted to the DOL
25 regarding the K-M ESOPs. Defendants will not encourage any person or entity to
26 claim protection under exemption regarding documents submitted to the DOL
27 regarding the K-M ESOPs.
28

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1 3. Plaintiffs agree to hold all documents that were submitted to the
 2 Department of Labor by Defendants that Plaintiffs receive from DOL in response to
 3 Plaintiffs' present or future FOIA request(s) as "HIGHLY CONFIDENTIAL –
 4 ATTORNEYS EYES ONLY" according to the terms of the Stipulated Protective
 5 Order signed by the parties until 30 calendar days after Plaintiffs provide such
 6 documents to Defendants;

7 4. Plaintiffs and Defendants agree that Plaintiffs will provide to
 8 Defendants an electronic or paper copy of all documents that are provided to Plaintiffs
 9 by DOL in response to Plaintiffs' present or future FOIA request(s), within 15
 10 calendar days of Plaintiffs' receipt of such documents.

11 5. Within 30 calendar days after receipt from Plaintiffs, Defendants agree
 12 to review all documents sent by Plaintiffs to designate any documents they intend to
 13 be protected by the Stipulated Protective Order, except that Defendants may not
 14 designate as confidential any documents provided to Plaintiffs by DOL that were not
 15 submitted to DOL by Defendants (for example, any documents created by DOL or
 16 submitted by parties other than Defendants). Plaintiffs' obligation under Paragraph 2
 17 to hold all documents received from DOL as "HIGHLY CONFIDENTIAL" will
 18 expire upon 30 days or upon Defendants' review and designation. When Defendants
 19 have completed their review and designation under this paragraph, only those
 20 documents designated by Defendants to be protected by the Stipulated Protective
 21 Order will covered by the terms of the Stipulated Protective Order.

22 6. Plaintiffs and Defendants agree that Defendants will provide to
 23 Plaintiffs an electronic or paper copy of all documents that are provided to Defendants
 24 by DOL in response to Defendants' present or future FOIA request(s), within 15
 25 calendar days of Plaintiffs' receipt of such documents.

26 7. Nothing in this Stipulation shall alter any party's right to challenge,
 27
 28

1 under the terms of the Stipulated Protective Order, the designation of any document as
2 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" except that during the period
3 described in paragraph 2 above all documents will be held as "HIGHLY
4 CONFIDENTIAL."

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6
7
8 DATED: February ___, 2007 LOVITT & HANNAN, INC.

9
10 By: _____
11 Ronald Lovitt

12 Attorneys for Defendants K-M Industries Holding
13 Co., Inc.; K-M Industries Holding Co., Inc. ESOP
14 Plan Committee; and CIG ESOP Plan Committee

15
16 DATED: February ___, 2007 HENNIGAN, BENNETT & DORMAN LLP

17 By: _____
18 Robert L. Palmer

19 Attorneys for Defendant William E. And Desiree
20 B. Moore Revocable Trust

21
22 DATED: February ___, 2007 MORGAN LEWIS

23 By: _____
24 Lisa Serebin

25 Attorneys for Defendant North Star Trust
26 Company

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1 DATED: February ___, 2007

2
3 LEWIS, FEINBERG, LEE, RENAKER &
4 JACKSON, P.C.

5 By: _____
6 Todd Jackson
7 Attorneys for Plaintiffs Thomas Fernandez and
8 Lora Smith

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10 Good cause appearing, it is APPROVED: and IT IS SO ORDERED.
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15 DATED: _____

16 Honorable Martin J. Jenkins
17 UNITED STATES DISTRICT JUDGE
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